

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TREVOR JAMES WILSON,

Defendant-Appellant.

UNPUBLISHED

January 10, 2012

No. 301806

St. Clair Circuit Court

LC No. 10-001757-FH

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Trevor James Wilson appeals as of right his jury trial conviction of larceny in a building.¹ Wilson was sentenced as a second-offense habitual offender² to three years' probation with the first 180 days to be served in jail with one day credit. We affirm.

In September 2009, victim Jamie Carrier met Wilson and his friends, Kristopher Dundas and John Aitken, at a bar. Wilson dropped Carrier off at her home that evening because she was intoxicated. Carrier then fell asleep on the couch without locking her door. When Carrier awoke the next morning, she discovered that several items were missing from her home. Dundas and Aitken pled guilty to charges stemming from the events of that evening and testified as witnesses for the prosecution. After Dundas and Aitken testified, the prosecution called St. Clair County Deputy Sheriff Timothy O'Boyle to testify as an impeachment witness regarding prior inconsistent statements made to him by Dundas and Aitken.

On appeal, Wilson argues that there was insufficient evidence to support his conviction of larceny in a building or to support that he aided and abetted the crime of larceny in a building. We disagree. We review challenges to the sufficiency of the evidence *de novo*,³ viewing the evidence in the light most favorable to the prosecution to "determine whether any rational trier of

¹ MCL 750.360.

² MCL 769.10.

³ *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007).

fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.”⁴

The elements of larceny in a building include:

(1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or the personal property of another, (5) the taking must be without the consent and against the will of the owner . . . [and] (6) the taking must be done within the confines of the building.⁵

A defendant can be convicted as an aider and abettor if the prosecution shows:

[1] that the crime was committed by the defendant or another, [2] that the defendant performed acts or gave encouragement that aided or assisted the commission of the crime, and [3] that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time the defendant gave the aid or assistance.⁶

Upon arriving at Carrier’s apartment complex, Wilson walked Carrier to her door. Wilson tried to follow her into her apartment, but Carrier stopped him from coming in and slammed the door. Carrier then fell asleep on the couch and left her apartment door unlocked. Wilson called Dundas to pick him up from Carrier’s house. Wilson then met Dundas and Aitken outside of Carrier’s apartment with a handful of Vicodin. The three men discussed returning to Carrier’s apartment, however, only Dundas and Aitken returned. Dundas testified that he and Aitken went to Carrier’s apartment so that Aitken could ask Carrier for cigarettes. Aitken testified, however, that before going into Carrier’s home there was a discussion that involved Wilson regarding Vicodin being exchanged. Dundas and Aitken entered Carrier’s apartment and Dundas observed Carrier “unresponsive” on the couch. Dundas also saw Aitken near Carrier’s purse, which contained a bottle of Vicodin. Dundas later saw Aitken with Carrier’s debit card. Aitken used Carrier’s debit card to purchase several cartons of cigarettes, which were divided among Wilson, Dundas and Aitken. The next morning, Carrier discovered that various items were stolen from her home, including \$750 in cash, three packs of cigarettes, prescription medication including Ativan and Vicodin, and her debit card. She also learned that her debit card was used without her consent. As such, viewing the evidence in the light most favorable to

⁴ *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

⁵ *People v Mumford*, 171 Mich App 514, 517-518; 430 NW2d 770 (1988), quoting *People v Wilbourne*, 44 Mich App 376, 378; 205 NW2d 250 (1973).

⁶ *People v Jones*, 201 Mich App 449, 451; 506 NW2d 542 (1993).

the prosecution, there is sufficient evidence to support Wilson's conviction for larceny in a building.⁷

Next, Wilson asserts that the trial court erred in permitting O'Boyle to testify regarding prior inconsistent statements made to him by Dundas and Aitken in order to impeach them. This issue is unpreserved. Accordingly, this Court will review the issue for plain error affecting Wilson's substantial rights.⁸ "Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings."⁹

Wilson uses a correct proposition of the law in arguing that impeachment testimony "should be disallowed when (1) the substance of the statement purportedly used to impeach the credibility of the witness is relevant to the central issue of the case, and (2) there is no other testimony from the witness for which his credibility was relevant to the case."¹⁰ Assuming *arguendo* that O'Boyle's testimony was improperly admitted, as explained above, there is sufficient evidence to support Wilson's conviction of larceny in a building without considering such testimony.¹¹ As such, any error was harmless.¹²

Finally, Wilson contends that the trial court erred when it prevented him from questioning Carrier regarding why she was prescribed Ativan and when it prohibited the bartender who served Carrier from testifying regarding the effects of combining alcohol and drugs. We disagree. "We review for an abuse of discretion a trial court's decision to admit or exclude evidence."¹³

While the trial court initially sustained the prosecution's objection to the defense questioning Carrier regarding why she was prescribed Ativan, Carrier later testified that she was prescribed Ativan for panic attacks and anxiety. Therefore, any error by the trial court was harmless.¹⁴

Wilson also argues that the trial court should have permitted the bartender who was serving Carrier to testify regarding whether Carrier's observed inebriation could have been the

⁷ *Wolfe*, 440 Mich at 515-516.

⁸ *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

⁹ *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003), citing *Carines*, 460 Mich at 774.

¹⁰ *People v Kilbourn*, 454 Mich 677, 683; 563 NW2d 669 (1997); See also *People v Stanaway*, 446 Mich 643, 692-693; 521 NW2d 557 (1994).

¹¹ *Wolfe*, 440 Mich at 515-516.

¹² *Carines*, 460 Mich at 774.

¹³ *People v Herndon*, 246 Mich App 371, 406; 633 NW2d 376 (2001).

¹⁴ *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

result of combining alcohol and drugs. The bartender was not testifying as an expert witness. As such, the admissibility of her opinion was governed by MRE 701, which permits “opinion testimony by a lay witness if it is rationally based on the perception of the witness and helpful to a clear understanding of a fact in issue.”¹⁵ There was no evidence that the bartender had any personal knowledge regarding the effects of combining alcohol and drugs that would be helpful to the jury. As such, the trial court did not abuse its discretion when it did not permit the bartender to testify regarding that subject.¹⁶

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹⁵ *People v Daniel*, 207 Mich App 47, 57; 523 NW2d 830 (1994).

¹⁶ *Herndon*, 246 Mich App at 406.